**No. 20-15568**

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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MACKENZIE BROWN,

*Plaintiff-Appellant,*

vs.

STATE OF ARIZONA, *et al.*

*Defendants-Appellees.*

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Appeal from the United States District Court
for the District of Arizona
Case No. 2:17-cv-03536-GMS
The Honorable G. Murray Snow

# APPELLANT'S PETITION FOR REHEARING OR REHEARING EN BANC

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## INTRODUCTION

By the time Orlando Bradford started abusing his classmate and girlfriend Mackenzie Brown, the University of Arizona already knew he posed a threat to female students. During his freshman year, it received a series of reports that he had strangled, hit, and otherwise abused two other students he dated. Yet the University took no steps to stop Bradford's pattern of violence and protect students like Mackenzie. To the contrary, it granted him permission to move into an off-campus house with his teammates, a privilege reserved for players who have demonstrated good behavior. There, Bradford subjected Mackenzie to his most extreme abuse, including strangling and threatening to kill her.

This is a textbook Title IX violation: the defendants (collectively "the University") were deliberately indifferent to the known risk Bradford posed to students. Yet, over Judge Fletcher's forceful dissent, a panel of this Court absolved the University of responsibility because Bradford's abuse of Mackenzie occurred off the University's campus—even though the University knew about Bradford's past violence, heavily regulated the players' house, and admits that it could have taken measures to prevent the abuse Mackenzie suffered.

In doing so, the majority adopted a sweeping, overly formalistic rule under which schools' responsibility to prevent and address sexual harassment turns on artificial geographic boundaries. That is wrong under Supreme Court precedent,

creates a circuit split, and conflicts with the federal government's interpretation of Title IX. The legal question here is also one of exceeding importance because the majority's rule guts crucial civil rights protections for students. Accordingly, this Court should grant rehearing or rehearing en banc to reconsider this erroneous decision.

## BACKGROUND

1. Over the course of the 2015-2016 academic year, school officials received multiple reports that Bradford, a freshman, was physically abusing two classmates he was dating: "Student A" and Lida DeGroote. Slip op. at 5-8. For example, Student A's teammates reported that Student A had a black eye and finger-shaped bruising on her neck, and that Bradford had admitted to strangling her. *Id.* at 5-6. The teammates also reported that Bradford had started "hitting" and otherwise abusing Lida, who had "bruises and marks all over her body." *Id.* at 26 (Fletcher, J., dissenting). When a University Title IX Coordinator called a meeting with Student A, the student recounted that "Bradford [had] choked her three or four different times." *Id.* at 7.

The University's response was wholly inadequate: It only ordered Bradford to stay away from Student A and moved him to a different dorm room. *Id.* at 8. The University did nothing to prevent Bradford from abusing other students. Slip op. at 8. It did not even inform his football coaches of his violence. Slip op. at 23 (Fletcher,

J., dissenting). As a result, the coaches granted him special permission to live off-campus with other players—a privilege reserved for those demonstrating good behavior. Slip op. at 8; *see also* ER54 (allowing players to live "off-campus subject to moving back on campus" for rules violations). The head coach later testified that, had he known about the abuse, he would have immediately dismissed Bradford from the team, which would have meant the termination of Bradford's scholarship as well. ER57-59, 61-63.

During the summer of 2016, between their freshman and sophomore years, Bradford began abusing Mackenzie. Slip op. at 8. The most extreme violence occurred over two days in the off-campus house where Bradford lived with other football players. *Id*. at 30-33 (Fletcher, J., dissenting). During that time, Bradford pushed and hit Mackenzie, dragged her by her hair, strangled her, told her to "[s]ay goodbye to [her] mom" because she was "never going to talk to her again," locked her in a room, and slapped her face so hard that her nose bled. *Id*. at 31-32 (Fletcher, J., dissenting). Bradford's abuse caused serious physical injuries, including neck, abdominal, and rib contusions; "burst blood vessels in the eye;" a concussion; an "intractable acute post-traumatic headache," and "rib pain with breathing and movement." *Id.* at 33 (Fletcher, J., dissenting). Soon after these assaults, Mackenzie's mother reported Bradford to the police, and he was arrested. *Id.* at 9. The football coaches immediately kicked Bradford off the team, and he left the

University after it began a disciplinary investigation. ER52, 101. Bradford was later convicted of felony aggravated assault and domestic violence. Slip op. at 9 n.2.

Because of Bradford's abuse, Mackenzie missed several weeks of classes. ER106. When she returned, she experienced a litany of psychological symptoms that made it hard for her to learn, including trouble concentrating, anxiety, and panic attacks. *Id.* at 106-08. She has since been diagnosed with post-traumatic stress disorder. *Id.* at 108.

2. Both Mackenzie and Lida sued the University for its deliberate indifference to Bradford's known abuse, alleging it had violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq*. Slip op. at 34 (Fletcher, J., dissenting). Their cases were assigned to two different judges. *Id.* Lida's suit succeeded: The Court granted her summary judgment on nearly every element of her claim. *DeGroote v. Ariz. Bd. of Regents,* No. CV-18-00310, 2020 WL 10357074, at *6-10 (D. Ariz. Feb. 7, 2020). It found that she had demonstrated as a matter of law that the University had been deliberately indifferent to Bradford's known abuse, and that Lida had been subjected to severe, pervasive, and objectively offensive sex-based harassment. *Id.* at *6-7, *9-10. And—most relevant to this appeal—the Court found that the University exercised substantial control over Bradford and the off-campus apartment in which the abuse occurred, rejecting the University's argument

that its control ended at its geographic boundaries. *Id.* at *8-9. The case settled shortly thereafter. Slip op. at 34 (Fletcher, J., dissenting).

Yet, in Mackenzie's case, a different judge granted summary judgment to the *University*. ER8. That Court found that, as a matter of law, the University did not have substantial control over the context in which Bradford's harassment of Mackenzie occurred because it happened at the off-campus house he shared with teammates. *Id.* at 7.

Mackenzie appealed to this Court, and a divided panel affirmed. It held that the University had control over Bradford, but not over the context in which he abused Mackenzie because the players' house was located off the University's campus. Slip op. at 20-21. The majority acknowledged that, as a practical matter, the University had full control over whether Bradford could live in that house, and that its funding covered his rent. *Id.* at 17. But, the majority said, that control was insufficient. *Id.* As a general matter, the majority explained, "[t]here is an appreciable difference between the degree of control an educational institution exercises over on-campus housing and off-campus housing." *Id.* So, it decided, all the indicia of the University's control over Bradford's house meant nothing because they did not prove "that the University had regulatory control over his residence *like it does over on-campus housing*." *Id.* (emphasis added). In other words, the majority held that a school's control over off-campus housing that is different in degree or kind from its

control over on-campus dorms is, simply, no control at all. A school, then, would never have Title IX responsibilities to address abuse that occurs in the "context" of off-campus student housing because its control of those residences, however significant, will never be identical to its control over its own buildings. *See id*.[1]

Judge Fletcher disagreed. In dissent, he explained that, though location could be an "important indicator of the school's control over the 'context' of the alleged harassment, the key consideration is whether the school has disciplinary authority over the harasser in the context in which the harassment takes place." Slip op. at 37 (Fletcher, J., dissenting). Judge Fletcher noted that the University had disciplinary authority over Bradford for his actions in his off-campus residence—a residence in which he was only permitted to live with permission from his coaches, and which he paid for with his scholarship. *Id.* at 42, 44 (Fletcher, J., dissenting). Mackenzie's evidence of control, then, was at least enough to survive summary judgment. *Id.* at 45 (Fletcher, J., dissenting).

[1] The majority appeared to recognize that a school will have control over its own events that happen to occur off-campus, including at an off-campus residence. *See id*. at 19-20. But its rule still forecloses courts from recognizing schools' control over off-campus student housing insofar as it functions as student housing.

# ARGUMENT

## I. The Panel Majority's Decision Contravenes Supreme Court Precedent, Creates a Circuit Split, and Conflicts with the Federal Government's Interpretation of Title IX.

As Judge Fletcher recognized, under controlling Supreme Court precedent, location is relevant but not dispositive to a school's control over the environment in which harassment occurs. *Id.* at 37 (Fletcher, J., dissenting). The majority erred in adopting a rule under which, as a categorical matter, schools lack control over off-campus student residences. *See id.* at 17. That rule is incompatible with the Supreme Court's direction, heeded by other courts, to treat control as a matter of "degree" dependent on multiple factors. Rehearing or rehearing en banc is therefore necessary for this Court to follow Supreme Court precedent, as well as to avoid conflicts with other circuits and federal agencies.

1. In *Davis*, the Supreme Court held that a school may be liable for its deliberate indifference to student-on-student sexual harassment. *Davis* v. *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 646-52 (1999). In doing so, it emphasized that a school could only be responsible for its *own* failure to intervene; it would not be vicariously liable for the student-harassers' misconduct. *Id.* at 640-41. Toward that end, *Davis* explained that a school's liability depended, in part, on its "control over the context in which the harassment occurs" and, "[m]ore importantly," its "control over the harasser." *Id.* at 646. That makes sense: If the school lacked the control

necessary to address the harassment, it could not be responsible for its failure to do so.

*Davis* did not define "control," but in summarizing its new legal test, the Court made clear that the crux is disciplinary authority. It wrote: "We thus conclude that recipients of federal funding may be liable for 'subject[ing]' their students to discrimination where the recipient is deliberately indifferent to known acts of student-on-student sexual harassment *and the harasser is under the school's disciplinary authority*." *Id.* at 646–47 (emphasis added). *Davis* was also clear that control is not binary, repeatedly discussing it as a matter of "degree." *Id.* at 644, 646, 649. That degree of control, it explained, would depend on factors beyond the location of the harassment, including the students' ages. *See id*. at 649.

As both a practical and legal matter, a school's control over its students' conduct often does not end at the campus boundary, even if it may diminish. *Mahanoy Area Sch. Dist. v. B. L. ex rel. Levy*, 141 S. Ct. 2038, 2045 (2021) (explaining schools can regulate students' off-campus "harassment" and "threats"). That is especially clear where a school's disciplinary policy expressly covers off-campus conduct. *See DeGroote*, 2020 WL 10357074 at *8. It is sensible for schools to regulate off-campus behavior since that misconduct—including off-campus sexual harassment—can affect students' on-campus learning. *See Farmer v. Kan. State Univ.*, 918 F.3d 1094, 1105 (10th Cir. 2019). And where there is a sufficient

"nexus between the out-of-school conduct and the school," *Rost v. Steamboat Springs RE-2 Sch. Dist.*, 511 F.3d 1114, 1121 n.1 (10th Cir. 2008), a school may have significant power to influence that off-campus environment, *see, e.g.*, slip op. at 43 (Fletcher, J., dissenting); *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 688 (4th Cir. 2018); *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170, 1182 (10th Cir. 2007); *Weckhorst v. Kan. State Univ.*, 241 F. Supp. 3d 1154, 1169 (D. Kan. 2017), *aff'd* 918 F.3d 1094 (10th Cir. 2019). That is, the school may have control over the context of the harassment. Contrary to the panel opinion, then, a school may, in certain circumstances, have control over off-campus housing "under [the] education program or activity," 20 U.S.C. § 1681(a).

2. This Court's sister circuits, as well as numerous district courts, have rejected the majority's rule that Title IX requires contemporaneous control precisely akin to a university's control over its buildings. For example, in the Tenth Circuit case *Simpson*, two students were raped at one of their off-campus apartments by members of the football team and high school recruits. *Simpson*, 500 F.3d at 1173. As in this case, the "'the likelihood of such misconduct was so obvious' that the University's failure 'was the result of deliberate indifference.'" Slip op. at 38 (Fletcher, J., dissenting) (quoting *Simpson*, 500 F.3d at 1173). The Tenth Circuit allowed the suit to proceed, recognizing that the University had sufficient control despite the off-campus location of the rapes. *See* slip op. at 38 (Fletcher, J.

dissenting). The majority attempts to distinguish *Simpson* on the basis that, there, the rapes "occurred during team … activities." Slip op. at 20. But a jury could find that athletes living together near campus at the revocable permission, and under the regulation, of their coaches is at least as much a team activity as athletes partying at another classmate's off-campus apartment with recruits—and that, as a practical matter, the two university-defendants exercised comparable degrees of control over those contexts.

Similarly, in *Weckhorst*, the district court determined that the university had substantial control over the plaintiff's off-campus rape. There, "the plaintiff got intoxicated at an off-campus fraternity event, and a fellow student who was a designated driver for a different fraternity sexually assaulted her in his vehicle and his off-campus fraternity house." *Id*. at 20 (citing *Weckhorst*, 241 F.Supp.3d at 1159). Indicia of the school's control included the school's regulation of fraternities and sororities, and its discipline of a fraternity for other, non-sexual rule violations that occurred off campus. *Weckhorst*, 241 F.Supp.3d at 1167. Attempting to distinguish Mackenzie's case, the panel says that the University of Arizona lacked "regulatory control over Bradford's off-campus apartment [akin to that] Kansas State University had over fraternities in *Weckhorst*." Slip op. at 20. The record, though, demonstrates the University of Arizona likely exercised at least as much authority over the football players' off-campus house: It determined which

teammates were allowed to live there, it reserved the right to revoke its permission even mid-semester, and the University's own policies make clear it had the disciplinary authority to regulate students' conduct in off-campus residences. *See infra* pp. 13-14.

Other courts also use a commonsense approach to determine whether a school has substantial control, rather than relying on campus boundaries alone. *Hurley*, 911 F.3d at 687-89 (explaining school's substantial control over online harassment—some of which occurred off-campus—was demonstrated by its ability to "exercise[] control in … ways that might have corrected the hostile environment"); *Rost*, 511 F.3d at 1121 n.1 (recognizing Title IX liability can arise related to off-campus conduct so long as there is "some nexus between the out-of-school conduct and the school"); *T.C. ex rel. S.C. v. Metro. Gov. of Nashville & Davidson Cnty.*, Nos. 17-01098, 17-01159, 17-01277, 2020 WL 5797978 at *19 (M.D. Tenn. Sept. 25, 2020) (finding school exercised control over off-campus harassment), *appeal docketed,* No. 20-6228 (6th Cir. Oct. 27, 2020); *Roe ex rel. Callahan v. Gustine Unified Sch. Dist.*, 678 F.Supp.2d 1008, 1011, 1025 (E.D. Cal. 2009) (holding school had control over off-campus football camp affiliated with, but not run by, the school); *Crandell v. N.Y. Coll. of Osteopathic Med.*, 87 F.Supp.2d 304, 317 (S.D.N.Y. 2000) (explaining school had control over off-campus clinical rotation because it regulated its students' participation); *see also Hall v. Millersville Univ.*, 22 F.4th 397, 409 (3d

Cir. 2022) (explaining control inquiry turns on specific facts, not categorical distinctions).

Those cases reflect the federal government's interpretation of Title IX. *See* U.S. Statement of Interest at 16-17, *S.W. v. Kan. State Univ.*, No. 16-02255 (D. Kan. Oct. 26, 2016), https://www.justice.gov/crt/case-document/file/906112/download [hereinafter "U.S. Statement of Interest"]; 85 Fed. Reg. 30,026, 30,093 (May 19, 2020) ("clarify[ing] that even if a situation arises off campus"—including in an "off-campus apartment"—"it may still be part of the recipient's education program or activity if the recipient exercised substantial control"); Letter from Adele Rapport, Reg'l Dir., Off. for Civ. Rts., U.S. Dep't Educ., to Janice K. Jackson, Chief Exec. Officer, Chicago Pub. Schs. Dist. #299 at 4-10, 33-34 (Sept. 12, 2019), https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05151178-a.pdf (finding district violated Title IX in failing to address off-campus sexual harassment that occurred outside any school activity). It is also consonant with Title VII case law, which requires employers to address employee-on-employee harassment that occurs outside of work. *See, e.g.*, *Dowd v. United Steel Workers of Am., Loc. No. 286*, 253 F.3d 1093, 1101-02 (8th Cir. 2001); *Ferris v. Delta Air Lines Inc*., 277 F.3d 128, 136-37 (2d Cir. 2001); *see also Emeldi v. Univ. of Or.*, 698 F.3d 715, 725 (9th Cir. 2012) (noting "[t]he Supreme Court has often 'looked to its Title VII interpretations of discrimination in illuminating Title IX'").

3. The consensus among the courts, then, is that "[t]he location at which the known harassment occurs is certainly part of a court's calculus in examining context—but it is not dispositive." *DeGroote*, 2020 WL 10357074 at *8. This case perfectly illustrates that rule. Nobody disputes that the University had substantial control over Bradford, slip op. at 16, or that its disciplinary policies cover off-campus conduct, ER99. And, construing the record evidence in Mackenzie's favor, the University also had substantial control over the context of the abuse. Slip op. at 41-45 (Fletcher, J., dissenting).

The University had an unusually high degree of control over Bradford's off-campus residence because he was an athlete. *See id*. at 44 (recounting expert's testimony about university control over student-athletes); *see also Dawson v. Nat'l Collegiate Athletics Ass'n,* 932 F.3d 905, 909-10 (9th Cir. 2019) (explaining that NCAA member schools heavily regulate student-athletes' lives). Bradford could only live off-campus with his coaches' permission, which depended on his good behavior. Slip op. at 9, 18. If he misbehaved, the coaches could force him to move back to a dorm. *Id*. at 44 (Fletcher, J., dissenting); ER54. Moreover, "[i]t is undisputed that if university officials had told Bradford's coaches of his assaults on Student A and [Lida]," as they surely should have, "the coaches would not have given him permission to live off campus," slip op. at 23 (Fletcher, J., dissenting)—

meaning that the University not only controlled the context of the abuse but affirmatively *created* it through its deliberate indifference.

Crucially, there is no dispute that the University had the power to address Bradford's past violence and so prevent his abuse of Mackenzie, regardless of its location. *Id.* at 23-24 (Fletcher, J., dissenting). After learning of Bradford's violence toward other women, the University could have increased supervision of Bradford, required him to engage in rehabilitative services, or suspended or expelled him. *See, e.g.*, U.S. Dep't of Educ. Off. for Civ. Rts., *Dear Colleague Letter: Harassment and Bullying* 3 (Oct. 26, 2010) [hereinafter "2010 Guidance"] (discussing options for school action). Head football coach Rick Rodriguez also testified that, if the University had informed him of Bradford's earlier violence toward classmates, he would have kicked Bradford off the team and revoked his scholarship, effectively expelling him. ER58. Indeed, Rodriguez cut Bradford as soon as he learned of his arrest, and the University opened a disciplinary investigation into Bradford for his off-campus abuse of Mackenzie. ER52, 90. Construing those facts in favor of Mackenzie, a reasonable jury could conclude that the University exerted control over the context of the abuse.

4. Regardless, in a "pre-assault" case like this one, a high degree of control over the physical location of the abuse matters little, because the University's

liability arises from its failure to address earlier complaints of Bradford's on-campus violence.

Generally speaking, Title IX sexual harassment claims come in two forms: (1) "post-assault" claims, as in *Davis*, in which a plaintiff seeks to hold the recipient liable for its deliberate indifference to her reports that she had been sexually harassed, and (2) "pre-assault" claims in which the plaintiff contends that the recipient is liable based on its deliberate indifference that occurred prior to—and helped cause—the sexual harassment she then experienced. *Karasek v. Regents of Univ. of California*, 956 F.3d 1093, 1099 (9th Cir. 2020). "Pre-assault" claims include cases, like this one, in which a school was deliberately indifferent to the risk a specific student or teacher with a history of harassment posed to the student body, and who went on to harass the plaintiff. *E.g.*, *Doe v. Sch. Bd. of Broward Cnty.*, 604 F.3d 1248, 1257-59 (11th Cir. 2010); *J.K. v. Ariz. Bd. of Regents*, No. CV06-916, 2008 WL 4446712, at *14 (D. Ariz. Sept. 30, 2008) (Murguia, J.).

In these cases, the "control" that matters most is the school's ability to address the substantial risk *before* the plaintiff is harassed: Absent that, the later abuse would not be the school's fault, and, as explained above, the purpose of *Davis*'s control requirement is to ensure that schools only face liability for their own failures. *See supra* pp. 7-8. Here, there is no question that the University had control over the context of Bradford's abuse of Student A, which occurred on campus. Slip op. at 28

(Fletcher, J., dissenting). Once it learned of that violence, the University unquestionably could have taken steps to protect other students from Bradford without departing from the scope of its ordinary on-campus operations. *See id.* at 42 (Fletcher, J., dissenting). Accordingly, the University's deliberate indifference—the "'discrimination' 'on the basis of sex'" for which it is liable, *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005)—occurred "under [the] education program or activity," 20 U.S.C. § 1681(a). So did the resultant "exclu[sion]" and "deni[al of] benefits" Mackenzie suffered as a result, such as the classes she missed. *Id*.

Besides, under Title IX's plain text, not *all* challenged discrimination must occur "under the education program or activity." 20 U.S.C. § 1681(a). The statute identifies three types of violations: A plaintiff states a claim if she was (1) "excluded from participation in … [the] education program or activity," (2) "denied the benefits of … [the] education program or activity," or (3) "subjected to discrimination under [the] education program or activity." *Id*. Thus, if a school's discrimination excludes a plaintiff from participation in the "education program or activity" or deprives her of its benefits, she may state a claim, regardless of whether the discrimination occurred "under [the] education program or activity." *Id.*

That Bradford abused his last victim-classmate in an off-campus house, rather than in a dorm, does not make the University less blameworthy—especially since Bradford was only allowed to live in that house because of its deliberate indifference.

*Cf. Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 278-79 (1998) (contemplating liability for school's failure to prevent off-campus teacher-on-student abuse based on past complaints, without any mention of control). In truth, the most relevant "context" of the abuse was not its location but rather the University's tolerance for Bradford's pattern of violence against female classmates.

## II. The Legal Question Here Is One of Exceeding Importance.

This case presents a fundamental question about the rights of students subjected to sexual harassment, including serious physical violence. Off-campus gender violence against students poses a grave threat to the educations of tens of thousands of students every year. Over thirty percent of female undergraduates experience sexual assault while enrolled. David Cantor et al., Association of American Universities, *Report on the AAU Campus Climate Survey on Sexual Assault and Misconduct* A7-56 (2020).[2] Most of this violence takes place off campus, and, of those assaults, nearly forty percent are committed by classmates or school employees. Eryn Nicole O'Neal et al., *Distinguishing Between On-Campus and Off-Campus Sexual Victimization: A Brief Report*, 8 Violence & Gender 53, 55 (2021), https://doi.org/10.1089/vio.2020.0029; Bonnie Fisher et al., *The Sexual Victimization of College Women* 20, U.S. Dep't of Justice (2000),

[2] https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf

https://www.ojp.gov/pdffiles1/nij/182369.pdf. And K-12 students, too, are sexually abused off campus by peers or teachers, as in *Gebser*, 524 U.S. at 278-79.

Artificial geographic boundaries do not prevent that abuse from limiting victims' access to education. That, the Department of Justice has said, is a matter of "common sense." U.S. Statement of Interest at 16. Fortunately, schools have tools at their disposal to try to prevent violence, regardless of whether a student poses a threat to a classmate in a dorm or in an apartment across the street. *See* 2010 Guidance at 3; slip op. at 42 (Fletcher, J., dissenting). They can also offer supportive services to ameliorate the educational effects of such violence after the fact, irrespective of where it occurs. *See, e.g.*, 34 C.F.R. § 106.30(a) (2020) (providing examples of supportive measures). The panel majority, however, has devised an unduly formalistic rule that, in too many instances, will absolve schools of their responsibilities to address gender violence. The Court should rehear this case not only to correct the opinion's legal errors but to protect thousands of students' access to education.

## CONCLUSION

For the reasons explained above, the Court should grant the petition for rehearing or rehearing en banc.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Circuit Rule 40-1 because this brief contains 4,199 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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Dated: March 25, 2022

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## CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 25, 2022.

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